

Note and will have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations will have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(e) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company must enter into an agreement, satisfactory to us, providing that all such deposits of assets therein will be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement will be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount will be subject to our prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount will be deposited or re-deposited in the Title XI Reserve Fund.

[65 FR 45152, July 20, 2000, as amended at 67 FR 61282, Sept. 30, 2002]

§ 298.36 Guarantee Fee.

(a) *Rates in general.* (1) For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel or Shipyard Project, we shall charge a Guarantee Fee set at a rate of not less than $\frac{1}{4}$ of 1 percent and not more than $\frac{1}{2}$ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual periods covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund

during said annual period (Average Principal Amount of Obligations Outstanding).

(2) For annual periods beginning with the delivery date of a Vessel or Shipyard Project, the Guarantee Fee shall be set at an annual rate of not less than $\frac{1}{2}$ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual periods covered by the Guarantee Fee. You will be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* (1) The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long-Term Debt (Variable Rate) of the Person who we consider to be the primary source of credit in the transaction (Credit Source), for example,

(i) The long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations),

(ii) The guarantor of the Obligations,

(iii) The Obligor, or

(iv) The bareboat charterer.

(2) Where the Variable Rate is used, we may make such adjustments to the computation of Equity and Long-Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source.

(3) We shall base our determination of Equity and Long-Term Debt on information contained in forms or statements on file with us prior to the date on which the Guarantee Fee is to be paid.

(4) With our consent, you may include in Equity and exclude from Long-Term Debt, any subordinated indebtedness representing loans from any credit source.

(5) We may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel or Shipyard Project.* For annual periods beginning prior to the delivery date of a Vessel or Shipyard Project being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long-Term Debt, the Guarantee Fee rate shall be $\frac{1}{2}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long-Term Debt, but less than the Long-Term Debt, the Guarantee Fee rate shall be $\frac{3}{8}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long-Term Debt, the Guarantee Fee rate shall be $\frac{1}{4}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel or Shipyard Project delivery or completion.* For annual periods beginning on or after the Vessel or Shipyard Project delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long-Term Debt, the Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long-Term Debt but less than 60 percent of the Long-Term Debt, the Guarantee Fee rate shall be $\frac{3}{4}$ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long-Term Debt, but less than the Long-Term Debt, the Guarantee Fee rate shall be $\frac{5}{8}$ of 1 percent of the Average Principal Amount of Obligations outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity is equal to or exceeds the Long-Term Debt, the Guarantee Fee rate shall be $\frac{1}{2}$ of 1 percent of the Average Principal Amount of Obligations outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* (1) The Guarantee Fee covering the full period of the stated maturity of the Obligations commencing with the date of the

Security Agreement shall be paid to us concurrently with the execution and delivery of said Agreement. The project's entire Guarantee Fee payment shall be made by you to us in an amount equal to the sum of the present value of the separate products obtained by applying the pertinent pre or post delivery Guarantee Fee rate or rates to the projected amount of the Average Principal Amount of Obligations Outstanding for each year of the stated maturity of the Obligations. In calculating the present value used in determining the amount of the Guarantee Fee to be paid, we shall use a discount rate based on information contained in the President's most recently submitted budget.

(2) The Guarantee Fee may be included in Actual Cost, is eligible to be financed, and is non-refundable.

(f) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations will be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and audit.

(a)(1) We shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other